IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Panna Lal V/S The State of Rajasthan & Ors.

S.B.CIVIL WRIT No.6545 of 1992

UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

Date of order : 17th May, 2006

PRESENT
HON'BLE SHRI N.P.GUPTA,J.

Mr.M.S.Singhvi, for the petitioner.
Mr.S.S.Ladrecha, AGA, for the respondents.

BY THE COURT:

By this petition, the petitioner has prayed for quashing the order, dated 2.5.92,(Annex.14), and for direction to fix the petitioner's pay in accordance with the option dated 9.8.85, as per the notification dated 12.6.85 (Annex.2), a direction has also been claimed for payment of arrears alongwith interest. Then in clause-(d) a prayer has been made to declare illegal and strike down the words “but prior to the date of option for revised pay scale” in the notification, Annex.2, and consequently, has claimed a declaration, that all those government servants, who have been appointed by direct recruitment subsequent to 1.9.81, were entitled to get option under order dated

12.6.85.

The facts of the case are, that the petitioner was appointed as Teacher Gr.III on 29.12.73. While so working he appeared for selection to the post of Tehsil Revenue Accountant (TRA), and vide order dated 22.8.83 he was appointed as such, on which post he joined on 7.4.83. The Rajasthan Civil Services (Revised Pay Scale) Rules, 1983, hereafter referred to be as the 'Pay Scale Rules of 1983' were promulgated by the notifications dated 17.2.83, and were brought into effect from 1.9.81. In terms of these Rules, the petitioner submitted his option on 2.4.83, for fixation of his pay scale. It is alleged that in exercise of powers conferred in Proviso to Article 309 of the Constitution, an amendment was made in Rule 26 of the Rajasthan Service Rules (RSR), which was published in Gazette on 12.6.85, which has been produced as Annex.2, according to which, if a person gets appointment to another post by direct recruitment after 1.9.81 but prior to the date of option for revised pay scale, may opt for fixation of pay under Rule 26 of the RSR, either for fixation of pay of the new post, or for fixation of pay for the lower post, and in the event of exercise of second option, was entitled to continue to draw the pay at the rate of pay of the lower post, until the date of option. Accordingly, the petitioner submitted another option on 9.8.85. Thereupon an objection was taken about the option having not been submitted in time, but then, vide Annex.5 dated 5.8.86, the Board of

Revenue accepted the option dated 9.8.85. However the pay fixation was not made in accordance with Annex.5, and the correspondence went on being exchanged between the Board of Revenue and other authorities, inasmuch as, the other authorities raised an objection, to the effect, that since in the earlier option the petitioner had opted new pay scale to be made applicable w.e.f. 1.9.81 to him, in terms of the order, Annex.2, he was not entitled to submit a fresh option, and ultimately the Board of Revenue passed the order Annex.14 dated 2.5.92, holding that on re-examination of the matter, it was found, that the petitioner is not entitled to submit the fresh option, and therefore, the matter was closed. It is this Annex.14, which is precisely sought to be quashed, being 2.5.92, and prayer has been made for acceptance of the option dated 9.8.85. Since the petitioner feels, that the words used "but prior to the date of option for revised pay scale" are discriminatory and unreasonable, this expression is also sought to be stuck down.

A reply has been filed, contending, that the petitioner, with eyes open, had submitted the option on 2.4.83, opting the date 1.9.81, and since there is no provision for giving second option, the case of the petitioner is to be governed by the first option. Regarding the notification, Annex.2, it was pleaded, that of course, in terms of that notification, if a person gets appointment

to another post by direct recruitment after 1.9.81, but prior to the date of option, may opt for fixation from the dates mentioned therein, but then, since the petitioner had opted for the revised pay scales since 1.9.981, in the first option, and that option was submitted after getting selected on the new post, therefore, the petitioner is not entitled to exercise the second option. In para-16 of the reply, a specific stand has been taken, to the effect, that the petitioner's case does not fall in the category of the employees entitled to submit second option, under the amendment, introduced vide Annex.2, as the petitioner had opted the revision of pay scale w.e.f. 1.9.81, as the notification, Annex.2 clearly provides, that those government servants who had opted revised pay scales of 1983, from a date subsequent to 1.9.81, on appointment to another post through direct recruitment, during the period commencing after 1.9.81, but prior to the date of option, may submit the option in accordance therewith. It is maintained, that the petitioner had the choice to opt the date 1.9.81, or not to opt it, but ones the petitioner has opted it, with eyes open, unless his case squarely falls within the four-corners of the amendment, Annex.2, he could not exercise option over again. Various other pleadings have also been taken in the reply, which need not detain me.

Then a rejoinder has also been filed by the petitioner, contending, that it is wrong to contend, that

there is no provision for giving second option, rather the very purpose of the amendment, made vide Annex.2, was to provide an option to the government servant, who has been appointed to other post by direct recruitment after 1.9.81, to opt for the pay in the lower post or for fixation of the pay in the higher post, and by the time this notification was promulgated, the time available for exercising option under the Rules of 1983 had already expired, therefore, the option could be submitted on publication of this order Annex.2. It was also contended, that on the face of Annex.2, when the petitioner was appointed as TRA vide order dated 7.4.83, he cannot be deprived of his pay fixation, only on the ground of his having earlier submitted the option, by the time Annex.2 came into force. It was maintained, that after being appointed as TRA, the petitioner submitted his option, which is subsequent to 1.9.81, and the words "but prior to the date of option for revised pay scale" do not come in his way, as the notification nowhere refers to the date of joining on the higher post. Then it was submitted, that vide Annex.5 option had been accepted, and was not simply taken to be within time. It was also pleaded, that the petitioner assails the notification, Annex.2, to the extent, that it restricts the benefit of option to those direct recruits, who had been appointed prior to the date of option, because the respondents cannot be permitted to create a class amongst the class, and the action of the respondents is

thus discriminatory, inasmuch as, the persons, who have been appointed subsequent to the date of option for revised pay scales, cannot be excluded from the purview of application, because the last date for exercising option expired much before 12.6.85. Then a plea has been taken in the rejoinder to contend, that there is no justification for excluding those direct recruits from getting the benefit under Annex.2, who have been appointed subsequent to the date of option, who have opted the applicability of pay scales from 1.9.81, as the notification restricts, and creates a class of its own, amongst the class of persons, who have been appointed subsequent to 1.9.81, and prior to the notification dated 12.6.85, and is, therefore, illegal. Then it is also pleaded, that a person can exercise his option, only when he is aware of the benefit, which he could get by opting for a particular mode of payment, as such, there was no object or purpose for restricting the benefit to only those persons, who have been appointed from prior to the date of option of revised pay scale.

I have heard learned counsel for the parties and have gone through the pleadings, and the revised pay scale Rules of 1983, so also the amendment made vide Annex.2

The facts, which are not in dispute are, that the petitioner was appointed as Teacher Gr.III on 29.12.73, and was also appointed as TRA vide direct recruitment on

7.4.83, the revised pay scale of 1983 were promulgated vide notification dated 17.2.83, and were brought into effect from 1.9.81, that the petitioner submitted his option on 2.4.83, opting the rules to be applicable from 1.9.81. Making of amendment in RSR vide Annex.2, and the petitioner's having submitted a fresh option on 9.8.85, so also passing of the order Annex.5, are also facts, which are not in dispute.

The question, which thus survives is, as to whether the order, Annex.14 is required to be set aside, or need not be interfered with?

One aspect of the matter is, that vide Annex.5, options submitted by the petitioner on 9.8.85 had been accepted, and thereafter, whether it was open to the Board of Revenue to re-examine the matter, and pass the order Annex.14, and the other aspect of the matter is, as to whether the petitioner was entitled to submit the second option on 9.8.85, and is also entitled to have that option accepted.

True it is, that as an abstract proposition, on the face of it, after having passed the order Annex.5, it might not have been open to the respondent-Board of Revenue to pass the order Annex.14, in absence of any power of review. But then, the fact does remain, that in order to

exercise my writ jurisdiction, to set aside Annex.14, I am not required to confine myself to the aspect of existence of power to pass order Annex.14 only, but have also to consider the aspect, about the consequences flowing from the quashing of Annex.14, i.e. whether a situation permissible by law would come about, or a situation not permissible by law would come about. It is settled legal position, that Article 226 jurisdiction need not be invoked in cases, where the interference with the impugned order, which may not be sustainable, is to result into bringing into existence another illegality. In that view of the matter, the first aspect need not detain me, and I have to concentrate on the second aspect, about the petitioner's entitlement to exercise the second option, and to have it accepted.

In this regard, two submissions have been made. The first being, that the restriction of entitlement to submit second option to the incumbents, who had already opted the date of applicability of the Revised Pay Scales of 1983 as 1.9.81, is arbitrary, and discriminatory, and is therefore, required to be struck down, or in any case, read down. The other submission made is, on the anvil of language of Rule 10(4) of the Revised Pay Scale Rules 1983, according to which, in case of government servants, who are holding post on 1.9.81, and for which no pay scale have been prescribed, on account of non-inclusion of posts in

the Schedule appended to these rules, or for any other reason whatsoever, or where the pay scale, or conditions attached to the drawl of pay, under these rules, are subsequently changed, amended or revised, effected government servant is entitled to exercise option within a period of two months of the date of notification of the pay scale, or any other change related to the pay scale in the Rajasthan Rajpatra.

Arguing the validity of prescribed cut off date, it was submitted, that the amendment was introduced in Rule 26 by Annex.2, only with a view to provide benefit to such incumbents, who happened to be appointed on other post by direct recruitment after 1.9.81, but prior to the date of option for the revised pay scales, obviously, the permissible date, fixed for submitting option under the Rules of 1983, and therefore, simply because an incumbent, who happens to be appointed to other posts by direct recruitment after 1.9.81, and before the date of option for revised pay scale, happened to have opted the Pay Scale Rules of 1983 to apply w.e.f. 1.9.81, cannot be allowed to create any class, to be placed at disadvantageous position, and therefore, this stipulation of Annex.2 is required to be struck down or read down.

Arguing on the anvil of Rule 10(4), it was submitted, that the amendment of Rule 26 by Annex.2 has the

effect of changing, amending, or revising the drawl of pay of the government servant, and therefore, the petitioner was entitled to exercise option within two months from the date of Annex.2, being dated 12.6.85, which he had done on 9.8.85, and therefore, it is required to be accepted.

On the other hand, learned counsel for the respondent submitted, that the notification Annex.2 is perfectly valid, and once the petitioner had exercised the option, with eyes open, unless his case squarely falls within the four-corners of Annex.2, he cannot be allowed to submit the second option, and even if submitted, it cannot be accepted.

I have considered the submissions.

In my view, so far the submission made on the anvil of Rule 10(4) is concerned, I do not find any force therein, inasmuch as, the amendment introduced in Rule 26, vide Annex.2, only purports to confer certain rights on certain categories of incumbents, to exercise a particular option, in certain circumstances, but then, it does not have the effect of changing, amending or revising the pay scale, or conditions attached to the drawl of pay of the post, which was occupied by the petitioner, whether that of TRA or that of Teacher Gr.III. In my view, an overall reading of Sub-Rule (4) shows, that the changes

contemplated therein, are required to be considered to be necessarily applicable to the post, i.e. the pay scale of that particular post should not have been included in the Schedule, or the pay scales or conditions attached to the drawl of pay of a particular post, should have been changed, revised or amended, so as to confer any right on the incumbent to exercise further option under Rule 10(4). Rule 10(4) cannot be invoked, nor can it be allowed to be invoked, in cases, where only one, or some individual incumbents concerned, in a particular post, feel, that their individual pay, or condition attached to drawl of their pay, have been changed, amended or revised. In that view of the matter, the submission made on the anvil of Rule 10(4) cannot be accepted and is negatived.

Then coming to the submission about the cut off date in Annex.2, in the first place, it may be noticed here, that in the writ petition, neither any pleading has been taken, nor any ground has been taken, nor any relief has been claimed, to strike down the requirement of the government servant having opted the revised pay scales from a date subsequent to 1.9.81. Rather the whole contention raised is, on the basis of invalidity of the expression “but prior to the date of option for revised pay scale”. In that view of the matter, the submission made about invalidity of the requirement of the incumbent having opted the revised pay scales of 1983 from a date subsequent to

1.9.81 is not required to be interfered with.

The other aspect of the matter is, even if I were not to stand to ceremonies, and were to examine the validity of the stipulation in Annex.2, being that the incumbent should have opted the revised pay scales from a date after 1.9.81, which means to give a right to such incumbent, who have been appointed to other post by direct recruitment during the period after 1.9.81 and prior to the date of option for revised pay scale, to submit a fresh option in cases, where the incumbent has opted the revised pay scales from a date subsequent to 1.9.81, I do not find the stipulation to be requiring any interference. Obviously, the rules had been published on 17.2.83, and the option was required to be given within a period of two months, and in that option, the incumbent could opt the rules from 1.9.81, or from a subsequent date. Obviously, the opting of the rules from 1.9.81, or from subsequent date, did have the respective financial consequences, may be advantageous to one, or may be disadvantageous to the other, but then, before exercise that option, one was required to comprehend, within oneself, the respective pros and cons, and was required to exercise option. With the result, that the persons exercising options w.e.f. 1.9.81, and the persons exercising from a date subsequent to 1.9.81, constituted two different classes. In that background, if the notification Annex.2 was issued,

amending Rule 26, conferring certain rights on one class of persons, it cannot be said, that on that count, the other class of persons should also be conferred the same right of option, at the pain of the stipulation to be required to be struck down. The petitioner exercised the option, with eyes open, and simply because he feels, that his decision in opting for one situation, does not yield the requisite dividends, he cannot be allowed to change over, as in view of Rule 10(5), the option once exercised is to be final.

Thus, I do not find any force in the writ petition. The same is, therefore, dismissed. The parties are left to bear their own costs.

(N.P.GUPTA),J.